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Framing and Diagnosing Constitutional Degradation:

A Comparative Perspective

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**Framing and Diagnosing Constitutional Degradation:
A Comparative Perspective**

Edited by Tania Groppi, Valentina Carlino and Giammaria Milani

This book collects the proceedings of the workshop “**Framing and Diagnosing Constitutional Degradation**”, held at Certosa di Pontignano (Siena, Italy) on June 21st and 22nd, 2021.

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TABLE OF CONTENTS

| | |
|--|-----|
| TANIA GROPPI, VALENTINA CARLINO AND GIAMMARIA MILANI | VII |
| <i>Preface</i> | |

Part I

The Processes of Constitutional Degradation

| | |
|---|----|
| MARIO PERINI | |
| <i>Introduction</i> | 3 |
| GIANMARIO DEMURO | |
| <i>Populism and Constitutional Degradation</i> | 5 |
| CARLA BASSU | |
| <i>The rule of law to the test</i> | 7 |
| GIACOMO GIORGINI PIGNATIELLO | |
| <i>Transformative Constitutionalism and Constitutional Courts in the European Legal Space. Germany and Italy in a Comparative Perspective</i> | 11 |
| MICOL PIGNATARO | |
| <i>Constitutional Degradation in a Time of Coronavirus: Reflecting on Governmental Accountability in the United Kingdom and Italy</i> | 21 |
| ANDREA VERNATA | |
| <i>Governing Bodies and Representative Assemblies: time for a new balance?</i> | 32 |
| GIUSEPPE NAGLIERI | |
| <i>Overtuning the Pillars of Democratic Representation Trough Modern Technology-Based Partisan Gerrymandering</i> | 39 |

Part II

A Global Comparative Perspective on Constitutional Degradation

| | |
|---|----|
| PIER LUIGI PETRILLO | |
| <i>A Global Comparative Perspective on Constitutional Degradation. An Introduction</i> | 51 |
| IBRAHIM KABOGLU | |
| <i>The Republic of Turkey: the end of Constitutionalism or of Constitutional Democracy?</i> | 55 |
| DIANA MARIA CASTANO VARGAS | |
| <i>Constitutional Regressions: the Prism of Indicators in the Colombian State</i> | 63 |
| LIDIA BONIFATI | |
| <i>Constitutional Design v. Constitutional Degradation: Strengthening the Rule of Law in Bosnia-Herzegovina</i> | 83 |

THIAGO BURCKHART

Constitutional Degradation and the Protection of Cultural Rights in Brazil: Deconstitutionalization and Institutional Deregulation **93**

VALENTINA CARLINO

Undemocratic Threats in the African context: which lesson to be learned from the Benin turning? **101**

FERDINANDO LA PLACA

Constitutional Degradation: a Comparative Overview **111**

GIACOMO SALVADORI

When the Judiciary gives weight to words. Italy and Spain compared on the repression of dissent **121**

FEDERICO SPAGNOLI

The Process of Constitutional Degradation in Spain. The Catalan Secession Crisis and the Scottish “precedent” **131**

EVIS GARUNJA

The Effects of Vetting Process on Constitutional Changes of Albanian Judiciary System **141**

Part III

Institutional Arrangements which Can Protect Liberal Democracy

IRENE SPIGNO

Introduction **153**

YLENIA MARIA CITINO

Comparing Constitutional Provisions Regarding Parliamentary Opposition. An Introductory Note **157**

ILARIA DE CESARE

Constitutional Degradation and the Italian Parliament. How can the Centrality of the Representative Body in the Italian Legal System be preserved? **167**

MARCO BRUNO FORNACIARI

Involution of the Constitutional Order and the Role of the Highest Courts: a Comparative Perspective **177**

MAYRA ANGÉLICA RODRÍGUEZ AVALOS

In defense of the Constitution: Judicial Autonomy and the Crusade of Judiciary in Mexico **185**

FRANCESCO ALBERTO SANTULLI

The Italian Crisis of Political Parties as a Phenomenon of Constitutional Degradation: what is to be done? Thinking about the electoral law **193**

MARCO ANTONIO SIMONELLI
The People's Watchdog. Safeguarding Democracy via Media Independence **201**

GIULIA VASINO
De-constructing and Re-building Procedural Standards: New Trends in the Current Stage of the Italian Constitutional Review of Legislation **209**

Part IV **European Integration and Constitutional Degradation**

FRANCESCO CLEMENTI
First Constitutional essentials first. An introduction to the Panel "European integration and Constitutional degradation" **221**

JOSEP MARIA CASTELLÀ ANDREU
Judicial Independence and the Rule of Law According to the Venice Commission **225**

STEFANO BARGIACCHI
The Accountability Public Finances in a Democratic Degradation Framework: the Case of Hungary. Is everything OK if the austerity acquis is (more or less) respected? **239**

LUCA DELL'ATTI
The Neo-liberal Twist of European Integration as a Degradation of Social Constitutionalism. Counter-trends in the Management of the Pandemic **245**

SIMONE GIANELLO
The European Convention on Human Rights as a tool for the protection of the rule of law (articles 17 and 18 ECHR) **253**

PIETRO MASALA
Emerging Collective Implications of Personal Data Processing: challenges and responses in the European context **263**

OMAR MAKIMOV PALLOTTA
Fighting Europarties' Democratic Backsliding: Arguments for a Multilevel Approach **273**

PAOLA PANNIA
Excluded from Guarantees, Excluded from the Community. "Institutional Uncertainty" in the Migration Domain as a Symptom of "Constitutional Degradation" **281**

Elenco delle Autrici e degli Autori **291**

Valentina Carlino*
Undemocratic Threats in the African context:
which lesson to be learned from the Benin turning? **

ABSTRACT: *The aim of the paper is to study the democratic backsliding phenomenon within the heterogeneous African context, specifically focusing on the emblematic case of Benin, a small Country generally recognised as one of the continent's best hopes until very few years ago. The recent reforms carried forward by the government majority on the impulse of the President of the Republic Patrice Talon, often endorsed by the decisions of the powerful and loyal Constitutional Court, are gradually weakening the democratic guarantees within the Country, which is therefore undoubtedly moving backwards.*

SUMMARY: 1. Introduction – 2. The “Beninese exception” within the “African exceptionalism” – 3. Preliminary steps – 4. Consolidation through the elections – 5. Amending the Constitution – 6. Brief concluding remarks.

1. Introduction

In recent years, many expressions have been created by scholars in the attempt of framing that phenomenon of progressive decline of democracy that we are experiencing worldwide, through different paths all leading to the same destination: «a process of incremental, but ultimately still substantial, decay in the [...] basic predicates of democracy»¹.

The situation we are currently experiencing could have seemed highly unlikely until few years ago, on the wave of the enthusiasm engendered by the worldwide spread of democracy marked by the “third wave of democratization”². Therefore, it could now seem surprising that contemporary constitutionalism, rather than strengthening and consolidating the democratic successes, is called to protect these last from what has been called a “third wave of autocratization”³.

No geographical area is immune from these processes of gradual deviation from the essential characteristics of democracy; nevertheless, scholars generally concentrate mainly on the weaknesses of the democratic guarantees characterising Countries of stable and consolidated democratic tradition⁴. Indeed, it could be more complicated to discuss about the recession of democracy within a context in which this latter is not fully achieved. It seems that this is precisely the reason why few studies focus on the degeneration of the African democracies, following a sort of preconception on the continent, that of the “impossible democracy”⁵.

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** This work has been subjected to blind peer review.

¹ T. GINSBURG, A.Z. HUQ, *How to Save a Constitutional Democracy*, Chicago-London, 2018, 43.

² S.P. HUNTINGTON, *The Third Wave: Democratization in the Late 20th Century: Democratization in the Late Twentieth Century*, Norman, 1993.

³ A. LÜHRMANN, S.I. LINDBERG, *A Third Wave of Autocratization Is Here: What Is New About It?*, in *Dem.*, 2019, 7, 1095-1113.

⁴ As for the European continent, as it is well known, the studies mainly refer to the Hungarian and to the Polish cases. *Ex multis*, see L. PECH, K. L. SCHEPPELE, *Illiberalism within: Rule of Law backsliding in the EU*, in *Cambridge Yearbook of European Legal Studies*, 2017, 19, 3-47.

⁵ R. ORRÙ, *Africa subsahariana: dalla “democrazia impossibile” alla “democrazia illiberale” senza passare per la “democrazia costituzionale”?*, in *DPCE Online*, 2020, 3, 4109-4134. According to M.L. DUDZIAK, *Who cares about*

2. The “Beninese exception” within the “African exceptionalism”

The African continent is certainly part of this abovementioned shift, since «the overall trend is that the democratic gains won in the period after 1990 are now eroding. [...] As a part of a global trend of democratic backsliding, African states have adopted legal restrictions on key civil and political rights that form the basis of democratic rule in a range of Countries»⁶. African constitutionalism is going through serious difficulties, thus putting into question the achievements of the so-called “second transition”.

When facing the topic, one should consider the failure of the first two generations of African constitution-building, these occurring when acquiring independence from the colonialists (independence constitutions, 1950s and 1960s) and in the immediately subsequent years (post-independence constitutions, from 1960s to 1989)⁷. Nevertheless, one should not ignore the “constitutional fever”⁸ that interested Africa since the very beginning of the 90s, giving rise to a new era of democratisation strictly linked to the socio-economic changes occurred⁹, which brought to legal orders characterised by political and social pluralism, changeovers of power, wide catalogues of rights and freedoms, independent oversight bodies (notably the establishment of Constitutional Courts) and the respect of the rule of law principle¹⁰. The “rebirth of African liberalism”¹¹ was not only theoretical: democracy is not an unknown notion in the Continent (anymore)¹². One should rather focus on the problems occurring in assuring the full implementation of the “democratic consequences”; on their effectiveness. The spread of the liberal constitutionalism paradigms must be analysed in the light of the economic, social, and political context of the region¹³, closely linked to what has been indicated as the “imperfection” of the African democracies¹⁴. Among the various elements, one should consider the strong tendency toward the one-party

courts?: Creating a constituency for judicial independence in Africa, in Mich. L.R., 2003, 6, 622-1634, «Amidst the blossoming of comparative scholarship, most of the continent of Africa is usually overlooked, as if it were a legal "Heart of Darkness", as if it were a lawless world».

⁶ L. RAKNER, *Democratic Rollback in Africa*, in N. CHEESEMAM (ed.), *The Oxford Encyclopedia of African Politics*, New York, 2019.

⁷ The categorisation is taken by C.M. FOMBAD (ed.), *Separation of Powers in African Constitutionalism*, Oxford, 14 ff.

⁸ J. DU BOIS GAUDUSSON, *Introduction*, in AA.VV., *Les Constitutions africaines publiées en langue française*, vol. 2, Paris-Bruxelles, 1998, 2.

⁹ On the topic N. CHEESEMAM, *Democracy in Africa. Successes, Failures, and the Struggle for Political Reform*, New York, 2015, 86-113.

¹⁰ See V. PIERGIGLI, *The Reception of Liberal Constitutionalism and “Universal Values in the African Bills of Rights. Ambiguities and Perspectives at the Turn of the Millennium*, in V. PIERGIGLI, I. TADDIA (eds.), *International Conference on African Constitutions. Bologna, November 26th-27th*, 1998, Torino, 2000, 119-144.

¹¹ The expression comes from E. GYIMAH-BOADI, *African Ambiguities: The Rebirth of African Liberalism*, in *J. Dem.*, 1998, 2, 18-31.

¹² For a reconstruction of the topic, also from an historical point of view, see H. KWASI PREMPEH, *Africa’s “Constitutionalism Revival”: False Start or New Dawn?*, in E.N. SAHLE (ed.), *Democracy, Constitutionalism, and Politics in Africa. Historical Contexts, Developments, and Dilemmas*, New York, 2017, 13-60. See also P. QUANTIN, *La démocratie en Afrique à la recherche d’un modèle*, in *Pouvoirs*, 2009, 2, 65-76.

¹³ L. MEZZETTI, *Le democrazie incerte. Transizioni costituzionali e consolidamento della democrazia in Europa occidentale, Africa, America latina, Asia*, Torino, 2000, spec. 169 ff.

¹⁴ S. SICARDI, *Le “democrazie imperfette”: un approccio problematico ed articolato*, in A. DI GIOVINE, S. SICARDI (eds.), *Democrazie imperfette. Atti del convegno dell’Associazione di Diritto Pubblico Comparato ed Europeo*, Torino, Università degli Studi, 29 March 2002, Torino, 2005, 1-6.

State, which seems to provide stability in a framework characterised by serious internal ethical conflicts. Consequently, even if multiparty elections have generally been assured in the Continent starting from the 90s, only few States have concretely witnessed a pluralistic political context, signed by a possible sharing of power¹⁵. It frequently happens that the electoral moment serves as tool for granting the renewal of the incumbent President, for permitting which the amendment of the Constitution is anything but rare¹⁶.

In this context, Benin stands out, or better, it used to. First African Country to inaugurate the “National Conferences” model (in 1990)¹⁷, its first democratic Constitutions – immediately submitted to a referendum in December of the same year – provides for a presidential form of government with elections of the Head of State every five years, along with legislative elections for the new unicameral Parliament to be held each four years. Under the new Constitution, Benin experienced the first multiparty legislative election in the Sub-Saharan region¹⁸ (17th February 1991). The “popular strength” behind the Beninese transition strongly influenced the design of the 1990 Constitution, which is characterised by a unique adherence to the principles of the African Charter on Human and People’s Rights¹⁹ as well as by the entrenchment of the «leading concentrated model of constitutional review on the continent»²⁰. The Constitutional Court, conceived as democratic watchdog of rule of law and human rights in the Country, is embedded with many functions.

Until few years ago, this constitutional design was generally conceived as a fortunate one; Benin has been considered as one of the African best hopes for a long time, standing out in the Western area as one of the very few successful transitions²¹. Moreover, if it is possible to observe a certain “stability” in the regimes established in most Countries of the continent, it is worth noting that Benin has instead recorded a real improvement in the “quality” of its democracy, especially thanks to the watchdog role played by the guarantee’s bodies, notably the Constitutional Court, which has shown itself capable to contain anti-democratic impulses and allow the maintenance of the democratic framework²².

¹⁵ See R. ORRÙ, *Africa e democrazia liberale: un intreccio possibile?*, in A. DI GIOVINE, S. SICARDI (eds.), *Democrazie imperfette*, cit., 239-274, spec. 265-268.

¹⁶ R. ORRÙ, *Africa subsahariana: dalla “democrazia impossibile” alla “democrazia illiberale”*, cit., 4122-4126. See also J. BLECK, N. VAN DE VALLE, *Electoral Politics in Africa since 1990: Continuity in Change*, Cambridge, 2019.

¹⁷ R.M. GISSELQUIST, *Democratic Transition and Democratic Survival in Benin*, in *Dem.*, 2008, 4, 789-814; A.D. ADAMON, *Le renouveau démocratique au Bénin*, Paris, 1995; K. NWAJIAKU, *The National Conferences in Benin and Togo Revisited*, in *J. Mod. Afr. Stud.*, 1994, 3, 429-447.

¹⁸ M. BRATTON, N. VAN DE WALLE, *Democratic Experiments in Africa Regime Transitions in Comparative Perspective*, Cambridge, 1997.

¹⁹ H. SÈGNONNA ADJOLOHOUN, *Between Presidentialism and a Human Rights Approach to Constitutionalism: Twenty Years of Practice and the Dilemma of Revising the 1990 Constitution of Benin*, in M. KIWINDA MBONDENYI, T. OJIENDA (eds.), *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa*, Cape Town, 2013, 245-290.

²⁰ S.H. ADJOLOHOUN, *Centralized Model of Constitutional Adjudication. The Constitutional Court of Benin*, in C.M. FOMBAD (ed.), *Constitutional Adjudication in Africa*, New York, 2017, 51-79, 52.

²¹ S.H. ADJOLOHOUN, *Centralized Model of Constitutional Adjudication*, cit., 52: «After two decades of practice, the achievements of Benin’s “constitutional revolution” speak for themselves. The Country has never missed any of its presidential, legislative or municipal elections since 1991. Six presidential elections have been held and four presidents have alternated in power in twenty-seven years of democratic renewal. Once known as the unstable nation in the era preceding the so-called “third wave of democratisation”, the country has not experienced a single *coup d’état* and not a single change was made to its constitution in the last twenty-seven years».

²² See S. LEVITSKY, L.A. WAY, *Competitive Authoritarianism. Hybrid Regimes After the Cold War*, New York, 2010, 291-297.

Moving from this context, the “U-turn”²³ of the Country may then seem particularly surprising and worrying. This process started a few months after the election of cotton magnate Patrice Talon as President of the Republic, in March 2016. In a very few years, Benin has undergone a rapid decline in terms of democracy: from virtuous example to case study for regression on the continent. In 2019, according to Freedom House data, Benin recorded the negative record as Country with the highest loss of democratic score in Africa²⁴; the following year, it was downgraded from Free to Partly Free²⁵.

How can such a change be explained?

3. Preliminary steps

Immediately after being sworn in as Head of State, Talon initiated a whole series of reforms aimed at ensuring the continuity of his power and strengthening it.

The first indispensable step to this end was the appointment of the new members of the Constitutional Court, which took place in June 2018. Until then, relations between the President and the Court had been very tense; more than once the acts of the executive had been judged by the latter as illegitimate, branded as being disrespectful of the Constitution. The “clash” had been exacerbated when, by *Décision DCC 18-001* of January 18, 2018, the Court had declared partially unconstitutional the *Loi n. 2017-43*, which had amended the 2015 General Statute of the Civil Service in the sense of introducing an absolute ban on strikes for certain categories of civil servants. The reform, strongly contested within civil society, was one of Talon's priorities in terms of public administration reform. In asserting the unconstitutionality of the legislation, the constitutional judge had used very strong words, arguing that «the legislature, in complicity with the executive power, insidiously lays the groundwork for a democratic involution that could lead to relive the painful experience of 17 years of dictatorship experienced by our country»²⁶.

The Court's activism, together with the breadth of its powers, explain why “capturing” it was one of Talon's first moves. According to Article 115 of the Constitution, the body is composed of seven members, four of whom are appointed by the National Assembly and three by the President of the Republic, for a non-renewable five-year term. Indeed, the question of the excessive influence of the President in the composition of the Court, due both to the three members of which he is responsible for the choice and to the *de facto* power he exercises over the Parliament, is quite old and intrinsically linked to the primacy of the Head of State over other organs²⁷. Talon therefore leveraged a pre-existing problem to secure a

²³ Expression created with reference to Hungary by J. KORNAI, *Shifting Away From Democracy – Hungary's U-Turn*, in *Public Finance and Management*, 2015, 3, 171-202.

²⁴ J. TEMIN, *Democratic Trends in Africa in Four Charts*, in *Freedomhouse.org*, 2020, available via Freedom House.

²⁵ Freedom House, *Freedom in the World 2020, Benin*, in *Freedomhouse.org*, available via Freedom House: «Benin had been among the most stable democracies in sub-Saharan Africa, but President Patrice Talon began using the justice system to attack his political opponents after taking office in 2016, and new electoral rules effectively excluded all opposition parties from the 2019 parliamentary elections. Protests surrounding those elections were met with harsh restrictions on civil liberties, including an internet shutdown and deadly police violence against demonstrators».

²⁶ All the translations from the French in this contribution are made by the Author.

²⁷ H. SÈGNONNA ADJOLOHOUN, *Between Presidentialism and a Human Rights Approach to Constitutionalism*, cit., 261-263.

"new" Constitutional Court loyal to him, which was necessary to support - and, above all, not hinder - the reforms that would follow. The appointment of Djogbenou, his friend and lawyer, as President of the Court, was therefore not particularly surprising.

Very significantly, almost as if to symbolize the start of the process of "institutional convergence", a few days after taking office, the new constitutional judges returned to rule on the legitimacy of the strike ban, raising the issue *ex officio* before themselves and overturning the outcome of the previous decision. With *Décision DCC 18-141* of June 28, 2018, the "new" Court restored the legality of the legislation in question, arguing on the basis of the need to ensure the continuity of the essential public service, what would justify the failure to comply with the constitutional and international rules on the subject.

In this context, it is worth noting that, only a week earlier, the Court had endorsed another of the crucial reforms for Talon, namely the creation of a *Cour de répression des infractions économiques et du terrorisme* (CRIET, with *Loi n. 2018-13*), a special judge entrusted with the repression of crimes related to terrorism, economy and trafficking and use of narcotics. Among the many problematic profiles, two stand out in particular: on the one hand, the members of the CRIET are all appointed by the Council of Ministers; on the other hand, the decisions rendered are not susceptible to appeal. The perfect timing with which the enactment of the law on the CRIET coincided with the installation of the new members of the Constitutional Court is certainly such as to legitimize suspicions that Talon was voluntarily waiting for the appointment of the new members, aware that the precedents would probably have asserted the non-compliance with the Constitution of the reform, blocking it. Moreover, it should be noted that the reform had been proposed by the President of the Constitutional Court Djogbenou when, immediately before serving as a constitutional judge, he was Minister of Justice.

One of the first cases brought before the CRIET was the so-called *affaire Ajavon*, named after the political rival of the incumbent President, accused in October 2016 of holding a large quantity of drugs in his apartment. Judged by an ordinary court in Cotonou, Ajavon was finally found not guilty, for lack of evidence. Shortly after his inauguration, however, the CRIET decided to reopen the case, examining the merits again, *in absentia*; in October 2018 the new sentence was issued, this time of guilt, with a condemn of twenty years in prison. Ajavon then turned to the African Court of Human and Peoples' Rights, alleging violation of numerous provisions of the Banjul Charter by the Beninese State²⁸. The Court upheld the plaintiff's claim, finding a violation of articles 3, 5, 7 and 26 of the Charter and article 14 of the International Covenant on Civil and Political Rights. Moving on from the concrete case, the African Court deemed the CRIET legislation illegitimate insofar as it disrespects the international principle - but also the constitutional principle - of the dual level of judgement; contrary to what the national executive maintains, the possibility of appealing against the decision of the special judge by *pourvoi en cassation* is not such as to protect the rights of the plaintiffs in the trial. Notably when, as it is the case, the decision is given by a specialized court, composed of members appointed by the government, whose procedural rules are such as to make the speed of the judgment prevail over respect for the individual's rights of defence and due process.

In any case, the indications provided by the African Court have been completely ignored by the Beninese authorities, which have neither annulled the sentence in question nor modified the reference legislation. Moreover, the case law of the CRIET, analysed in the light of the

²⁸ African Court on Human and Peoples' Rights, *Ajavon c. Repubblica del Benin*, n. 013/2017, 29 March 2019.

decisions rendered, raises considerable doubts as to the impartiality of this body, which has on several occasions sentenced political rivals of Patrice Talon to imprisonment or exile, preventing them from participating in electoral contests. The controversy, never really extinguished, exploded again over the presidential elections of April 2021 (*infra*); during the electoral campaign, the CRIET inflicted more than one sentence on the leaders of the oppositions, who, in the end, were not able to present their candidacy.

4. Consolidation through the elections

Once launched, Talon's political project needed to be consolidated, to avoid as much as possible an overturning of the situation and, consequently, the loss of the leadership²⁹. For that purpose, it was necessary to modify the electoral framework. The first moves of the “legal gambit” put in place by Talon “to normalise the political exclusion”³⁰ consisted in a combination of a new Electoral Code³¹ and a new Charter of the Political Parties³², promulgated on the initiative of the Beninese President in September 2018, a few months before the legislative elections held in April of the following year.

Among the many changes made to the electoral legislation in 2018, two are worth mentioning here. First, Article 242 of the Electoral Code sets the bar threshold for elections to the National Assembly at 10%. Evidently, in addition to making the exclusion of the dominant party rather unlikely - especially in democracies that are not fully stable³³ - the purpose of the novelty is to drastically decrease the number of lists among which to distribute parliamentary seats, in a country characterized by a very strong multipartyism, which counts (*rectius* counted) more than two hundred parties.

Also of great concern is the substantial increase in the deposit to be deposited with the National Autonomous Electoral Commission (CENA) to be validly presented for election. With the new Electoral Code, presidential candidates must pay 250 million CFA francs (approx. 380,000€), compared to the 15 million previously provided (approx. 10,000€); to be admitted to the legislative elections, lists must instead pay 200 million CFA francs (approx. 300,000€) and no longer 8 million (approx. 12,300€)³⁴. The new law operates a selection of candidates based on wealth; moreover, the economic difficulties in which the country finds itself cannot be ignored, so that for most of those who would like to participate in the electoral competition, the new deposit represents an almost insurmountable obstacle. Moreover, the refund of the deposit is not automatic; only the candidates for the presidency or the electoral lists that have received at least 10% of the valid votes are entitled to regain possession of the amount paid.

²⁹ For instance, as for Hungary, see M. MAZZA, *The Hungarian Fundamental Law, the New Cardinal Laws and European Concerns*, in *Acta Juridica Hungarica*, 2013, 2, 140-155.

³⁰ M. DUERKSEN, *The Dismantling of Benin's Democracy*, in *Africa Center For Strategic Studies*, 2021, available via Africa Center.

³¹ *Loi n. 2018-31 portant code électoral en République du Bénin*.

³² *Loi n. 2018-23 portant Charte des partis politiques en République du Bénin*.

³³ C. O'DWYER, M. STENBERG, *Local-Level Democratic Backsliding? The Consolidation of Aspiring Dominant-Party Regimes in Hungary and Poland*, in *Gov. & Opp. Int. J. Comp. Pol.*, 2021, 1, 1-24.

³⁴ F. DIALLO, *Combien coûte une candidature à une présidentielle en Afrique subsaharienne?*, in *Jeuneafrique.com*, 2019, available via Jeune Afrique.

It is worth noting that, in the occasion of the *a priori* control, the Constitutional Court had considered both the Electoral Code and the Charter of Political Parties perfectly legitimate³⁵, as then confirmed a few months later on the occasion of a verification of compliance with the Constitution of the presidential decree of January 2019 by which the elections to the National Assembly were called, requested by two Beninese citizens (belonging to the opposition)³⁶.

Due to the new electoral framework, only two lists, both supporting the ruling majority, were authorized by CENA to compete, while the other candidates were deemed not to comply with the new electoral rules. Despite the protests that broke out in the country and led to demonstrations in the capital³⁷, the voting operations were carried out and the result was validated by the Electoral Commission. With a participation rate at an all-time low of around 26%, the *Union Progressiste* party won 47 seats, and *Bloc Républicain* 36; a totally one-party parliament loyal to President Talon.

5. Amending the Constitution

With a fully loyal Parliament, the Head of State could finally amend the 1990 Constitution – after two failed attempts within the previous Parliament – with *Loi constitutionnelle n. 2019-40* of 7 November 2019. The revision was a wide-ranging one, affecting 47 of the 160 articles composing the text and numerous topics. The constitutional law, unanimously approved, was passed in a very short time, following an unsuitable urgent procedure, validated by the Constitutional Court³⁸. Nevertheless, the lack of consensus and dialogue behind the amendment served as basis for the decision of the African Court with which it declared the illegitimacy of the Beninese constitutional revision law, since it does not comply with the “principle of consensus” referred to in art. 10, par. 2 of the African Charter on Democracy, Elections and Governance³⁹. According to the judges of Arusha, «the fact that the Revised Constitution was passed unanimously cannot conceal the need for national consensus», which would also emerge from the ideals imprinted in the Charter of December 1990⁴⁰. For this reason, the *Noudehouenou* ruling of December 2020 ordered the Beninese State to abrogate the constitutional revision law, to guarantee citizens direct participation, free of any political, administrative or judicial obstacles, in the elections and, therefore, indirectly in the modification of the Constitution⁴¹. Naturally, no action was taken by the national executive on the words of the African Court.

After all, the review served to consolidate the dominance of the President.

Among the main tools introduced for this purpose, one should remember the one of the “sponsorships”. Art. 132 of the Electoral Code, as modified with *Loi n. 2019-43* of 15 November 2019, in accordance with the amended art. 44 of the Constitution, establishes that, to

³⁵ Constitutional Court of Benin, *Décision DCC n. 18-199I*, 2 October 2018.

³⁶ Constitutional Court of Benin, *Décision EL 19-001*, 1 February 2019.

³⁷ F. PAUTEL, *Benin: Crackdown on protests and wave of arrests fuel tense election period*, in *amnesty.org*, 2019, available via Amnesty.

³⁸ *Décision DCC 19-504*, 6 November 2019.

³⁹ T. BLAISE, *La charte africaine de la démocratie, des élections et de la gouvernance*, in *Annuaire français de droit international*, 54, 2008, 515-528.

⁴⁰ African Court on Human and Peoples' Rights, *Noudehouenou c. Repubblica del Benin*, n. 003/2020, 4 December 2020, par. 65.

⁴¹ See the comment of O.D. AKINKUGBE, *Houngue Eric Noudehouenou v. Republic of Benin*, in *Am. J. Int. L.*, 2021, 2, 281-287.

legitimately run in the presidential election, a candidate must be supported by at least 10% of all the deputies and mayors in office. Having said that, a fundamental role was played by the local elections held on May 2020 for the renewal of councils, mayors, and deputy mayors in seventy-seven municipalities of the Country, elections in which only five parties were allowed to compete, four of which belonged to the governing majority. The rules established by the new Electoral Code allowed the installation of mayors almost entirely of political sensitivity close to the Head of State. Obviously, along with the already discussed parliamentary election, this facilitated the application of the sponsorship mechanism in favour of the majority in charge. In fact, some potential candidates were not even able to present their candidacy, as they were unable to gather the consensus of the percentage of deputies or mayors required by the Electoral Code. This context paved the way for a dispute before the Constitutional Court, brought by some citizens of Benin with the intention of having the electoral legislation declared illegitimate, insofar as it impeded the possibility of free candidacy. In this regard, it should be recalled that the Arusha Court has repeatedly affirmed the incompatibility of the African Charter of Human and Peoples' Rights with national provisions aimed at preventing the presentation of independent candidacies⁴².

As was predictable, the circumstances outlined above led to a new victory for Talon who, without too many surprises, was re-elected in the first round with 86.36% of the preferences expressed; a real show of strength against his competitors, in a vote with a participation rate of 50.17% of those eligible. Despite the protest movements that arose in the Country in the weeks immediately preceding the vote, Talon was sworn in and (re)installed as President of the Republic on 23 April 2021.

6. Brief concluding remarks

What can the Beninese democratic decline tell us?

Firstly, one should notice that the situation of this small but emblematic Country is not an isolated case; on the contrary, it seems to perfectly fit within that recalled tendency that is globally putting democracy at risk. In this sense, it seems possible to affirm that the phenomena of erosion can also refer to the African continent, which is experiencing them in more than one Country.

On the other hand, one cannot ignore the parallelism between what is happening among the most successful liberal democracies in the area - including, precisely, Benin - and what we are witnessing in certain contexts of Western legal tradition (and not only). Indeed, constitutional degradation seems to constitute a minimum common denominator in experiences which are very distant from each other and generally difficult to compare. The causes, the protagonists, the instruments, the objectives found in the various studies of domestic law are basically the same, thus generating a sort of "blank slate" of democratic backsliding to be filled with content according to the individual national experiences, whose

⁴² The first decision in this sense has been pronounced on 14 June 2013 within a case concerning Tanzania, on which: V. PIERGIGLI, *La Corte africana dei diritti dell'uomo e dei popoli giudica sulla violazione dei diritti di partecipazione politica e delle regole democratiche in Tanzania (Tanganika Law Society et al. v. Tanzania, 14 giugno 2013)*, in *Federalismi.it, Focus Africa*, 1, 2014.

fragility - or, on the contrary, solidity - in terms of democracy can certainly be an important factor in the maintenance of the guarantees for its protection⁴³.

Last but not least, it is worth noting that, as for the African continent, the democratic erosion in progress is assuring a growing role to the Arusha Court, often considered by oppositions, activists and citizens as a place in which to challenge the illegitimate decisions of the majorities in charge, the twisting of the representation circuit and non-consensual constitutional revisions⁴⁴. At the same time, it confirmed that the main difficulty in the effectiveness of the African system of protection of rights lies in the lack of implementation of sentences by the States parties. In fact, the litigation initiated before the African Court seems to confirm the theory that the Court can serve as a place where the voices of opposition, too often silenced at the domestic level, can be heard to trigger social change. Unable to effectively address national institutions, many actors in local political and civil life turn to the regional court as a form of activism, even in the knowledge that its decisions are often unheard and disregarded (as happened, as mentioned, in Benin). However, this does not exclude the usefulness of recourse to the international court, which in any case triggers a mechanism of accountability of the governments involved, whose actions will be under the spotlight of the entire international community.

On the one hand, the risk is that of diminishing the role of the African Court, as well as fuelling the resistance of numerous countries to its jurisdiction. In April 2020, Benin withdrew its declaration to allow individuals, as well as non-governmental organizations (NGOs) with observer status at the Commission, to bring questions directly before the Court, a possibility foreseen in articles 5, paragraph 3 and 34, paragraph 6 of the Protocol to the African Charter on Human and Peoples' Rights for the creation of an African Court on Human and Peoples' Rights. Of the thirty countries that are signatories to the protocol, only ten have decided to guarantee such a possibility; as of today, it is guaranteed only in Burkina Faso, Gambia, Ghana, Malawi, Mali and Tunisia. Rwanda, in fact, withdrew its membership in 2016, to be followed by Tanzania in 2019 and Benin and Ivory Coast in 2020. To be read in the prism of the aforementioned African reticence to recognize a regional jurisdiction, the issue is undoubtedly also linked to the progress of the democratic involution underway on the continent, for which the Court could constitute a barrier.

On the other hand, in fact, although opposed by the countries that have ratified the Protocol, recourse to the African regional judge seems to be looked upon favorably precisely because it is potentially capable of curbing, or at least shedding light on, the illiberal mechanisms triggered in the area; this seems to be borne out by the hostility of the national authorities.

In fact, once the erosion underway at a global level has been ascertained and after having traced the "mechanisms" and common causes that are repeated in the various national contexts, the only viable solution seems to be to look at possible remedies. If constitutional democracy is undoubtedly in danger, what can we do to save it, through the tools it provides?

⁴³ M.W. SVOLIK, *Which democracies will last? Coups, incumbent takeovers and the dynamic of democratic consolidation*, in *Brit. J. Pol. Scie.*, 2010, 4, 715-738; D. SLATER, B. SMITH, G. NAIR, *Economic origins of democratic breakdown?*, in *Persp. Pol.*, 2014, 2, 353-374.

⁴⁴ As also suggested by O.D. AKINKUGBE, *Houngue Eric Noudehouenou v. Republic of Benin*, cit., 281.

